

(j) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in paragraph (h) of this section.

(k) Except as permitted paragraphs (h) or (i) of this section, a participant shall not knowingly do business under a covered transaction with a person who is—

- (1) Debarred or suspended;
- (2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or
- (3) Ineligible for or voluntarily excluded from the covered transaction.

(l) Violation of the restriction under paragraph (k) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(m) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

§ 500.110 Amendments.

The Board's rules in this chapter may be adopted or amended, or new rules may be adopted, only by majority vote of the Board. Authority to adopt or amend these rules may not be delegated.

Subpart C—Oil and Gas Guaranteed Loans

§ 500.200 Eligible Borrower.

(a) An eligible Borrower must be a Qualified Oil and Gas Company that can demonstrate:

- (1) Credit is not otherwise available to it under reasonable terms or conditions sufficient to meet its financing

needs, as reflected in the financial and business plans of the company;

(2) The prospective earning power of that company, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

(3) The company has agreed to permit audits by the General Accounting Office and an independent auditor acceptable to the Board prior to the issuance of the guarantee and while any such guaranteed loan is outstanding; and

(4) It has experienced layoffs, production losses, or financial losses between January 1, 1997, and the date of application for the Guarantee, demonstrated as a comparison between employment, production, or net income existing on January 1, 1997 and on the date of application.

(b) The Lender must provide with its application a letter from at least one lending institution other than the Lender to which the Borrower has applied for financial assistance, since January 1, 1997, indicating that the Borrower was denied for substantially the same loan they are now applying for, and the reasons the Borrower was unable to obtain the financing for which it applied. In addition, the Lender applying for a guarantee under this Program must certify that it would not make the loan without the Board's guarantee.

§ 500.201 Eligible Lender.

(a) A lender eligible to apply to the Board for a Guarantee of a loan must be:

- (1) A banking institution, such as a commercial bank or trust company, subject to regulation by the Federal banking agencies enumerated in 12 U.S.C. § 1813; or

(2) An investment institution, such as an investment bank, commercial finance company, or insurance company, that is currently engaged in commercial lending in the normal course of its business.

(b) Status as a Lender under paragraph (a) of this section does not assure that the Board will issue the Guarantee sought, or otherwise preclude the Board from declining to issue a Guarantee. In addition to evaluating

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an application pursuant to § 500.207, in making a determination to issue a Guarantee to a Lender, the Board will assess:

(1) The Lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of investment institutions;

(2) Whether the Lender possesses the ability to administer the loan, as required by § 500.211(b), including its experience with loans to oil and gas companies;

(3) The scope, volume and duration of the Lender's activity in administering loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's loss rate as a percentage of loan amounts for its current fiscal year; and

(6) Any other matter the Board deems material to its assessment of the Lender.

(c) In the case of the refinancing of an existing credit, the applicant must be a different lender than the holder of the existing credit.

§ 500.202 Loan amount.

The aggregate amount of loan principal guaranteed under this Program to a single Qualified Oil and Gas Company may not exceed \$10 million.

§ 500.203 Guarantee percentage.

A guarantee issued by the Board may not exceed 85 percent of the amount of the principal of a loan to a Qualified Oil and Gas Company.

§ 500.204 Loan terms.

(a) All loans guaranteed under the Program shall be due and payable in full no later than December 31, 2010.

(b) Loans guaranteed under the Program must bear a rate of interest determined by the Board to be reasonable. The reasonableness of an interest rate will be determined with respect to current average yields on outstanding obligations of the United States with remaining periods of maturity comparable to the term of the loan sought to be guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate of such loan to be unreasonable.

(c)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security as provided for within the terms and conditions of the Guarantee.

(2) Without limiting the Lender's or Borrower's obligations under paragraph (c) of this section, at a minimum, the loan shall be secured by:

(i) A fully perfected and enforceable security interest and or lien, with first priority over conflicting security interests or other liens in all property acquired, improved, or derived from the loan funds; and

(ii) A fully perfected and enforceable security interest and or lien in any other property of the Borrower's pledged to secure the loan, including accessions, replacements, proceeds, or property given by a third party as Security for the loan, the priority of which shall be, at a minimum, equal in status with the existing highest voluntarily granted or acquired interest or lien;

(3) The entire loan will be secured by the same Security with equal lien priority for the guaranteed and the unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference over the guaranteed portion.

(4) An Applicant's compliance with paragraph (c)(2) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the loan.

(d) An eligible Lender may assess and collect from the Borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a Guarantee to the Lender.

[64 FR 57947, Oct. 27, 1999, as amended at 64 FR 72024, Dec. 23, 1999]

§ 500.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 8 p.m. EST, January 31, 2000, in the U.S. Department of Commerce, Washington,